

CHAIRMAN OF THE JOINT CHIEFS OF STAFF INSTRUCTION

J-4
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CJCSI 2120.01
28 April 2004

ACQUISITION AND CROSS-SERVICING AGREEMENTS

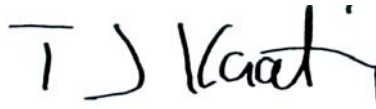
References: See Enclosure E.

1. Purpose. This instruction provides policy and procedural guidance concerning the use of the legal authorities contained in Sections 2341–2350 of title 10, United States Code (reference a). It does not provide substantive legal authority to negotiate or conclude cross-servicing agreements. Such authority is provided in applicable US law (reference a) and may be delegated by the Secretary of Defense to the Chairman of the Joint Chiefs of Staff and the combatant commanders as described in Enclosures A and C. This instruction implements reference b.
2. Cancellation. Not Applicable
3. Applicability. This instruction applies to the Joint Staff, combatant commands and Defense agencies reporting to the Secretary of Defense through the Chairman of the Joint Chiefs of Staff. These organizations will use this instruction, in conjunction with references b, c and d, to exercise acquisition-only authority and to negotiate, conclude and execute cross-servicing agreements for which approval authority has been delegated to the Chairman by the Secretary of Defense. Military departments and Defense agencies negotiating and concluding implementing arrangements for cross-servicing agreements will coordinate such arrangements with the applicable combatant command in accordance with paragraph 5.5.3 of reference b.
4. Policy. See Enclosure A.
5. Definitions. Definitions are provided in the Glossary.

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6. Responsibilities. Responsibilities are outlined in Enclosure B.
7. Releasability. This instruction is approved for public release; distribution is unlimited. DOD components (to include the combatant commands), other Federal agencies and the public may obtain copies of this instruction through the Internet from the CJCS Directives Home Page--http://www.dtic.mil/cjcs_directives. Copies are also available through the Government Printing Office on the Joint Electronic Library CD-ROM.
8. Effective Date. This instruction is effective upon receipt.

For the Chairman of the Joint Chiefs of Staff:



T. J. KEATING
VADM, USN
DIRECTOR, JOINT STAFF

Enclosures:

A-Policy
B-Responsibilities
C-Procedures for Developing Acquisition-Only Agreements, Cross-Servicing Agreements and Implementing Arrangements
D-Execution Procedures
E-References
GL-Glossary

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LIST OF EFFECTIVE PAGES

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ENCLOSURE A

POLICY

1. Purpose. This Enclosure provides policy guidance to the combatant commands and Defense agencies reporting to the Secretary of Defense through the Chairman of the Joint Chiefs of Staff (hereafter referred to as “the Chairman”) for the use of the legal authorities provided in reference a, also referred to as the acquisition and cross-servicing agreement (ACSA) authorities.

2. Scope. This Enclosure, in conjunction with references b, c and d, provides CJCS guidance for the use of the ACSA authorities by the combatant commands or Defense agencies reporting to the Secretary of Defense through the Chairman.

3. Acquisition-Only Authority. The first type of authority contained in reference a is acquisition-only authority. Under this authority, DOD components may exercise a statutory waiver of certain provisions of US law in the acquisition of logistic support, supplies and services (LSSS) from eligible countries and international organizations. This authority may only be used to acquire LSSS to support US forces deployed outside the United States.

a. Under reference a, eligible countries and international organizations include other NATO countries and NATO subsidiary bodies; and the UN organization or other regional international organizations of which the United States is a member.

b. DOD components may also use acquisition-only authority to acquire LSSS from a country, not a member of NATO, if it meets one or more of the following criteria:

- (1) Has a defense alliance with the United States.
- (2) Permits the stationing of members of the US Armed Forces or the home porting of US naval vessels in such a country.
- (3) Has agreed to pre-position US materiel in such a country.
- (4) Serves as host country for US Armed Forces during exercises or permits other US military operations in such a country.

c. Reference b delegates to the Chairman the authority to determine those non-NATO countries from which DOD components may acquire

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LSSS using acquisition-only authority. This authority is redelegated to the combatant commanders.

d. Acquisition-only authority may be implemented either through contracts using the authority of Chapter 137, title 10, United States Code (USC) (Federal Acquisition Regulation [FAR] contracting), in conjunction with 10 USC 2341 and 2343 or through international agreements (acquisition-only agreements) that rely solely on the authority of 10 USC 2341 and 2343. The existence of a cross-servicing agreement (See paragraph 4. below) or implementing arrangement (IA) is not required.

(1) All contracts that use Chapter 137 authority will be executed by a warranted contracting officer.

(2) DOD components considering the use of acquisition-only authority with an eligible country may develop a separate acquisition-only agreement to document country or operation and/or exercise-specific terms and conditions for such acquisitions. Such an agreement is considered an international agreement under references c and d.

e. Under reference b, DOD components may liquidate obligations incurred while using acquisition-only authority by cash, replacement-in-kind or exchange of LSSS of equal value.

4. Cross-Servicing Agreement Authority. The second type of authority provided in reference a authorizes the Secretary of Defense to enter into cross-servicing agreements with authorized countries and international organizations for the reciprocal provision of LSSS with the military forces of that country or international organization.

a. The Secretary of Defense must consult with the Secretary of State and provide 30-day advance notification to the Committees on Armed Services and Foreign Relations of the US Senate and the Committees on Armed Services and International Relations of the US House of Representatives before designating non-NATO countries as authorized for cross-servicing agreements.

b. Reference b delegates to the Chairman the authority to nominate non-NATO countries for designation as authorized for cross-servicing agreements. This authority may be redelegated to the combatant commanders. The Chairman has exercised this redelegation authority in Enclosure B, subparagraph 2i(7) of this instruction.

c. When exercising cross-servicing agreement authority, DOD components may provide LSSS to a foreign country or international organization only as a transfer or temporary loan under a cross-servicing

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agreement, except when provided as payment for LSSS acquired by the Department of Defense pursuant to an acquisition-only agreement.

d. Under reference b, cross-servicing agreements may provide for payment of obligations by cash, replacement in kind or exchange of LSSS of equal value.

e. Cross-servicing agreements and implementing arrangements (if any) set forth the terms and conditions for the acquisition or transfer of LSSS between DOD components and an authorized country or international organization. They do not commit or bind either party to any particular number, monetary value or form of transactions; rather, individual orders placed and received under a cross-servicing agreement or an implementing arrangement (if any) constitute the binding document. ACSAs may generally extend for an indefinite period, because they do not require the obligation of funds.

5. Using the ACSA Authorities

a. The ACSA authorities provide the combatant commanders and the Service component or sub-unified commands the means to acquire and provide mutual logistic support during training, exercises and military operations, or to permit expedited access to the logistics assets of foreign country armed forces to satisfy the logistics support requirements of deployed US Armed Forces.

b. In accordance with reference b, combatant commanders and their Service component or sub-unified commands are encouraged to use the ACSA authorities in a broad range of military contingencies and circumstances, including wartime, combined exercises, training deployments, contingency operations, humanitarian or foreign disaster relief operations, peace operations conducted under Chapter VI or VII of the United Nations Charter or in unforeseen or exigent circumstances.

c. The categories of LSSS that may be acquired or transferred under the ACSA authorities are defined in the Glossary. Examples of the major categories of LSSS are included in Appendix A to this Enclosure.

(1) Excluded items include weapon systems; initial quantities of replacement and spare parts for major end items of equipment covered by tables of organization and equipment, tables of allowance and distribution or equivalent documents; and major end items of equipment (except for the lease or loan of general purpose vehicles and other non-lethal items of military equipment that are not designated as significant military equipment in the US Munitions List.)

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(2) Additional excluded items are guided missiles; naval mines and torpedoes; nuclear ammunition and included items, such as warheads, warhead sections, projectiles, demolition munitions and training ammunition; cartridge- and propellant-actuated devices; chaff and chaff dispensers; guidance kits for bombs or other ammunition; and chemical ammunition (other than riot control agents).

d. Combatant commanders and their Service component or sub-unified commands may not use the ACSA authorities to procure goods or services reasonably available from US commercial sources.

e. Reference a prohibits increasing the inventory levels of DOD components in anticipation of requests for LSSS made under cross-servicing agreements. Therefore, combatant commanders and their Service component or sub-unified commands must consider the potential effect of completing a proposed ACSA transaction on the operational readiness of US Armed Forces and affected military appropriations. Direct purchase of authorized goods or services from a vendor to meet an ACSA transfer request is permitted. Transfers of LSSS involving contractor-furnished support will be processed in accordance with standard ACSA execution procedures (See Enclosure D).

f. In accordance with reference d, the use – under the ACSA or other authorities – of specific subcategories of military communications assets and related services requires coordination with and approval from the Chairman. A list of such assets and services is contained in reference d.

g. In considering foreign country or international organization requests for LSSS, the combatant commanders and their Service components or sub-unified commands should also consider whether it is more appropriate to fulfill the request through other means, including foreign military sales, direct commercial sales or military drawdown authority (see reference e). Combatant commanders and their Service component or sub-unified commands must also consider the extent to which provision of the requested LSSS is related to ongoing US military exercises or objectives. All foreign country requests for excluded items (see subparagraphs 5c(1) and 5c(2) above) or items involving unusual liability and foreign disclosure issues will be processed through foreign military sales or direct commercial sales channels, as authorized in reference f.

h. To facilitate timely provision of support under cross-servicing agreements and to enhance US operational readiness, the combatant commanders and their Service component or sub-unified commands may coordinate in advance the level and type of LSSS to be acquired or transferred to a given country or eligible international organization. This

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may include preparation (but not execution) of ACSA order forms or other required documentation, but does not include the increase in DOD inventory levels.

i. References a and g contain specific limitations on the dollar value of LSSS that may be acquired from or transferred to a country or international organization in any fiscal year.

(1) These limitations apply only to cash transactions; they do not apply to ACSA transactions that involve replacement-in-kind or equal-value exchange.

(2) The dollar value limitations described in references a and g do not apply during a period of active hostilities involving the US Armed Forces.

(3) These limitations are also waived when US Armed Forces are involved in a contingency operation or non-combat operation (including an operation in support of the provision of humanitarian or foreign disaster relief or in support of UN peacekeeping operations) for the purpose and duration of that operation.

j. LSSS provided by DOD components under a cross-servicing agreement may not be retransferred to another country, international organization or entity (other than to officers, employees or agents of the foreign country or international organization whose military originally receive the LSSS) without the prior written consent of the US Government. All written requests for third-party retransfers will be forwarded via the combatant command through the Joint Staff/J-4 to OSD for review and approval. Under certain conditions, the Department of Defense may provide blanket approval for retransfers of LSSS for specific operations, type of LSSS, countries and/or international organizations or periods of time. Requests for such waivers will be considered on a case-by-case basis. Detailed procedures for requesting approval for retransfers are contained in paragraph 6 of Enclosure D.

k. Disputes arising in connection with the execution of a specific cross-servicing agreement, including one party's failure to reimburse another for LSSS received under that agreement, will be resolved in accordance with the dispute resolution provisions of the cross-servicing agreement and paragraph k of reference c.

(1) If the cross-servicing agreement contains no such procedures, the matter will be referred through the Joint Staff to OSD for resolution.

(2) Personnel authorized to negotiate, conclude or execute ACSA transactions are encouraged to resolve disputes that arise from

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administrative or clerical errors directly with the foreign party before referring the matter to higher headquarters. In addition, coordination among the responsible military authorities and the use of the State Department assets (i.e., country teams) to facilitate resolution is encouraged.

1. All acquisitions and transfers of LSSS under the ACSA authorities will be fully documented using the order form or other documentation specified in the applicable acquisition-only or cross-servicing agreement.

m. On occasion, standard ACSA execution and reimbursement procedures may be modified to meet the requirements of a specific operation or other contingency. Combatant commands, with input from Service component commands, will document and coordinate operation-unique changes to standard execution and/or reimbursement procedures with responsible Joint Staff and OSD elements.

6. Developing Acquisition-Only and Cross-Servicing Agreements and Implementing Arrangements

a. Cross-servicing agreements and IAs shall be developed, negotiated and concluded in accordance with the policy guidelines in this section and the procedures described in Enclosure C. Enclosure C also contains procedures for developing acquisition-only agreements that provide for use of acquisition-only authority with one country. These procedures do not apply to the development of contracts executed under the authority of reference a and Chapter 137 of 10 USC.

b. All proposed new or revised cross-servicing agreements will be referred to the Office of the Director, International Cooperation, Office of the Under Secretary of Defense for Acquisition, Technology and Logistics (OUSD[AT&L]/IC) through the Joint Staff/J-4 for review and provision of authority to conclude such agreements. US-proposed texts for cross-servicing agreements shall be based on the current DOD- and DOS-approved agreement template.

c. When delegated authority from OSD, the Chairman may negotiate and conclude cross-servicing agreements or delegate this authority to the combatant commanders or other lead agents. Combatant commanders may redelegate this authority to a combatant command's Service component or sub-unified command.

d. The Chairman, combatant commander or other DOD official delegated the authority to negotiate and conclude cross-servicing agreements shall maintain written documentation of the agreement negotiation process. These records shall be kept in permanent files until the agreement is terminated.

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e. There is no prescribed signatory level for cross-servicing agreements developed by the Chairman, combatant commanders or other lead agents; however, the DOD signatory should be equivalent in rank or protocol level to the foreign country signatory.

f. Whenever practical, the Chairman, combatant commanders or other designated lead agents will use a single cross-servicing agreement to authorize the acquisition or transfer of LSSS with a foreign country or international organization. Development of multiple cross-servicing agreements with individual foreign countries or international organizations is discouraged.

g. Some proposed transfers of LSSS under an existing cross-servicing agreement may require amending that agreement. All amendments to cross-servicing agreements must be processed through Joint Staff/J-4 in the same manner as a new cross-servicing agreement. Some changes to the implementation of an existing cross-servicing agreement may also be effected through development of a new IA, or the amendment of an existing IA. Creating or amending an IA requires coordination with affected combatant commanders, if any. If policy significant, a new or modified IA must be coordinated with the Joint Staff.

(1) Use of the cross-servicing agreement beyond the geographic limits specified in the agreement itself will require amendment of the cross-servicing agreement.

(2) When use of the cross-servicing agreement outside the AOR of the combatant commander responsible for the agreement is not prohibited by the terms of the agreement, such use may nevertheless require the negotiation of a new IA or the amendment of an existing one. All new IAs as well as amendments to existing IAs, must be coordinated with the combatant commander responsible for the cross-servicing agreement being implemented.

(3) Transferring LSSS that is beyond the scope of LSSS contemplated by the original cross-servicing agreement will require amendment of the cross-servicing agreement.

(4) Transferring LSSS that is within the scope of the existing cross-servicing agreement but is beyond the scope of LSSS described in the existing IA will require either amending the existing IA or negotiating a new one.

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h. A combatant commander seeking to negotiate and conclude an IA to support exercises contingencies or other operations that involve more than one combatant commander's geographic AOR will coordinate with all other affected combatant commanders before the conclusion of that IA.

i. A combatant commander, Service component or sub-unified command seeking to negotiate and conclude additional IAs to existing cross-servicing agreements will coordinate with and obtain the approval of the combatant commander responsible for the original cross-servicing agreement.

j. IAs that include provisions for the acquisition or transfer of military airlift, sealift or other forms of transportation services provided or funded by USTRANSCOM shall be concluded only after coordination with and approval of that command.

k. In accordance with reference d, IAs including provisions for the use of specific subcategories of military communications assets and related services shall be concluded or executed only after coordination with and approval from the Chairman. A list of such assets and services is contained in reference d.

l. In accordance with references b and c, officials delegated the authority to negotiate and conclude cross-servicing agreements and IAs will provide two certified copies (with language certification letter and other information required by reference c) of all concluded acquisition-only and cross-servicing agreements and all IAs to the General Counsel of the Department of Defense and one copy (each) to the Chairman's Legal Counsel and to the Assistant Legal Advisor for Treaty Affairs, DOS, not later than 20 days after such agreement or IA is signed. An electronic scanned copy (PDF format preferred) of the agreement and the language certification letter should also be submitted to the Joint Staff/J-4 at the same time.

7. ACSA Reporting. Detailed guidance on the frequency, format and required information elements for ACSA reports is provided in reference g.

8. Training. Reference b requires that personnel assigned responsibility by the DOD components for administering and implementing acquisition-only or cross-servicing agreements shall have the requisite knowledge and experience to carry out ACSA transactions in accordance with applicable law and DOD acquisition and financial management policy. To support this requirement, the Joint Staff, combatant commands and their Service component or sub-unified commands (supported by the Military departments) will each develop and maintain

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appropriate training programs for all personnel involved in developing or executing cross-servicing agreements or using acquisition-only authority. This applies to DOD personnel designated specifically as ACSA points of contact (POCs) in cross-servicing agreements or IAs and to personnel providing legal, contracting, logistic or financial management support to ACSA transactions.

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APPENDIX TO ENCLOSURE A

EXAMPLES OF SUPPORT PERMITTED UNDER ACSA

<u>Category of LSSS</u>	<u>Examples</u> <i>Derived from the discussion of LSSS categories contained in the legislative history of the NATO Mutual Support Act of 1979 (Senate Report 96-795), updated to reflect changes in statute and usage.</i>
Food	US forces feeding troops from ACSA countries or organizations and vice versa; acquisition or transfer of rations.
Billeting	ACSA countries or organizations providing billeting for US troops; temporary shelter for US or ACSA country or organization units; and hygiene services for both ACSA nation and US troops.
Transportation	Moving personnel and equipment; moving one country's petroleum products in another nation's tanker; airlift of personnel to or within a theater of operations; one force providing another force with temporary use of general-purpose vehicles, with or without drivers.
Petroleum, Oil, and Lubricants (POL)	Refueling of ground vehicles of another force; refueling of aircraft of another force while in an ACSA country; replacement-in-kind or equal value exchange of fuel with ACSA countries/organizations.
Clothing	Cold weather items (gloves, thermal underwear, socks) and protective clothing provided in an emergency during exercises or operations. Does not include provision of distinctive items of military uniform and insignia of clothing identified as significant military equipment in reference h.
Communication Services	Field radio operator support; use of base installation communications facilities and equipment; access to communications satellites; translation and interpretation services.
Medical Services	Furnishing or receiving health care services; emergency provision of medical supplies; use of medical facilities of another country during exercises, operations or for mass casualties.

Table A-A-1. Examples of Support Permitted Under ACSA

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<u>Category of LSSS</u>	<u>Examples</u> <i>Derived from the discussion of LSSS categories contained in the legislative history of the NATO Mutual Support Act of 1979 (Senate Report 96-795), updated to reflect changes in statute and usage.</i>
Ammunition	<p>Transfer of small arms ammunition between forces on exercises or operations; replacement in-kind of ammunition expended at ACSA country firing ranges; emergency acquisition by US Armed Forces of conventional ammunition (small arms, mortar, automatic cannon, artillery and ship gun ammunition); bombs (except "smart" bombs), unguided projectiles and rockets; riot control chemical ammunition; land mines, demolition material, grenades, flares and pyrotechnics; and all items associated with the foregoing items, including explosives, propellant, projectiles, warheads, fuses, boosters, safe and arm devices, in bulk, combination or separately packaged items of issue for complete round assembly. Specifically excluded are the following: guided missiles; naval mines and torpedoes; nuclear ammunition and included items such as warhead, warhead sections, projectiles, demolition munitions and training ammunition; cartridge and propellant-actuated devices; chaff and chaff dispensers; guidance kits for bombs or other ammunition; and chemical ammunition (other than riot control).</p>
Base Operations Support	<p>Foreign country or international organization support of US installations, maintenance of facilities, grounds keeping, perimeter security, laundry services, minor construction (construction under 10 USC 2854, 2805 and 2803) incident to base operations support; support of units in exercises or operating from a collocated operating base. LSSS provided to US Armed Forces from the resources of a foreign military installation and vice versa.</p>
Storage Services	<p>Use of a foreign country's storage, maintenance and security services (i.e., warehousing); temporary storage of assets belonging to another ACSA country's armed forces.</p>
Use of Facilities	<p>One force receiving temporary use of a building on another ACSA country's base; temporary use of cold storage facilities; temporary use of mortuary facilities. Does not include paying for the use of facilities provided free of charge under host nation support or status of forces agreements or NATO Standardization Agreements (STANAGs).</p>

Table A-A-1. Examples of Support Permitted Under ACSA (Cont'd)

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<u>Category of LSSS</u>	<u>Examples</u> <i>Derived from the discussion of LSSS categories contained in the legislative history of the NATO Mutual Support Act of 1979 (Senate Report 96-795), updated to reflect changes in statute and usage.</i>
Training Services	Use of training ranges; orientation visits with ACSA country units; training US and ACSA country forces in aircraft and vehicle cross-servicing (including uploading, fly away and downloading of ammunition), use of flight simulators, target services, calibration of test equipment and in-theater orientation and training of ACSA country pilots (subject to Service-specific regulations) in aerial refueling procedures. Does not include costs for attendance at formal US schools.
Spare Parts and Components	Mutual spare parts support; replacement of defective radio equipment in aircraft or vehicles.
Repair and Maintenance Services	Servicing of aircraft and vehicles of one force at another force's bases; preventive maintenance services; host country provision of vehicle maintenance services for weapons systems.
Port Services	Offloading US or ACSA country equipment at foreign country ports of embarkation or debarkation; temporary storage of offloaded equipment; minor vehicle maintenance, such as battery recharging or jump starting.

Table A-A-1. Examples of Support Permitted Under ACSA (Cont'd)

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ENCLOSURE B

RESPONSIBILITIES

1. Purpose. This Enclosure summarizes the responsibilities of OSD, the Military departments and Defense agencies for the ACSA authorities. It also prescribes responsibilities of the Chairman, Joint Staff, combatant commands and their Service component or sub-unified commands for the use of these authorities.

2. Responsibilities

a. Office of the Secretary of Defense. OSD is the final policy and legal authority for the use of the ACSA authorities. Within OSD, the OUSD[AT&L]/IC is the focal point for the ACSA program. Complete OSD ACSA-related responsibilities are prescribed in reference b; the most important of these include:

(1) Consult with DOS and notifying Congress before designating countries as authorized for cross-servicing agreements.

(2) Designate countries as authorized for cross-servicing agreements.

(3) Authorize the Chairman or other designees to negotiate and conclude cross-servicing agreements.

(4) Develop and maintain guidance with respect to accounting, pricing, internal control and reporting of ACSA transactions for inclusion in reference g.

(5) Allocate to Defense agencies their share of ceilings on ACSA acquisitions and transfers.

(6) Oversee legal reviews performed by DOD components with respect to the negotiation and conclusion of cross-servicing agreements and IAs.

(7) Approve retransfers of LSSS from the original foreign recipient to another foreign country or international organization.

(8) Maintain a central DOD repository of all acquisition-only and cross-servicing agreements and any associated IAs.

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b. The Military Departments and Defense Agencies. Complete Military department and Defense agency ACSA-related responsibilities are prescribed in reference b; the most important of these include:

(1) Acquire logistic LSSS under the ACSA acquisition-only authority (10 USC 2341), after coordination with the applicable combatant commander(s).

(2) Acquire logistic LSSS under the ACSA cross-servicing authority (10 USC 2342), after coordination with the applicable combatant commander(s).

(3) Negotiate and conclude IAs when designated as lead agent by the applicable combatant commander.

(4) Where appropriate, determine the source and value of reimbursement for LSSS that is acquired or transferred under a cross-servicing agreement.

(5) Establish controls to prevent exceeding the limitation of annual ceiling for credits and liabilities as provided in references a and g and any additional ACSA implementation guidance.

(6) Maintain financial and program records of all transactions under the ACSA authorities, as required in reference g.

(7) Provide reports on ACSA activity in accordance with references b and g.

c. The Defense Finance and Accounting Service (DFAS). DFAS provides centralized accounting and billing support for most ACSA transactions. Complete DFAS ACSA-related responsibilities are prescribed in reference g; the most important of these include:

(1) Collect and consolidate data and information related to the status of billings for all reimbursable (cash) ACSA transactions as part of the monthly Status of Contingency Operations Report provided to all DOD Components.

(2) Pursue timely collection of ACSA invoices owed to the US Government, and facilitate timely payments of ACSA invoices owed to foreign countries or international organizations.

d. Chairman of the Joint Chiefs of Staff. The Chairman shall:

(1) Negotiate and conclude cross-servicing agreements when authorized by OSD.

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(2) Delegate to the combatant commanders or other lead agents the authority to negotiate and conclude cross-servicing agreements.

(3) In accordance with references d and k, approve all IAs and ACSA orders that provide for the transfer or use of specific subcategories of military communications, equipment, systems, procedures and other support. A complete list of such items and services is contained in reference d.

(4) Provide ACSA implementation guidance to the combatant commands.

e. Director, Joint Staff/J-4. Director, J-4, shall:

(1) Serve as the Joint Staff office of primary responsibility for the use of the ACSA authorities.

(2) Assemble and lead the Joint Staff team to negotiate and conclude cross-servicing agreements for which authority to negotiate and conclude was not further delegated. This team will include at a minimum a representative from the Office of the Chairman's Legal Counsel, the Joint Staff/J-5 and the affected combatant command(s).

(3) On behalf of the Chairman, review and approve proposed IAs or ACSA orders involving the transfer or use of specific subcategories of military communications, equipment, systems, procedures and other support, in accordance with references d and k. This review shall be coordinated with the Chairman's Legal Counsel, the Joint Staff/J-5 and the Joint Staff/J-6.

(4) On behalf of the Chairman, delegate authority to negotiate and conclude cross-servicing agreements to the combatant commanders, after coordination with OSD.

(5) In coordination with the responsible combatant commander, the Joint Staff/J-5 and the Chairman's Legal Counsel, and on behalf of the Chairman, determine those non-NATO countries from which the Department of Defense may acquire LSSS using acquisition-only authority.

(6) In coordination with the Joint Staff/J-5 and the Chairman's Legal Counsel, delegate to the combatant commands the authority to determine non-NATO countries from which the Department of Defense may acquire LSSS using acquisition-only authority.

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(7) Maintain a list of non-NATO countries from which the Department of Defense may acquire LSSS using acquisition-only authority and a list of countries with signed cross-servicing agreements.

(8) When requested by a combatant commander, and in coordination with the Joint Staff/J-5 and the Chairman's Legal Counsel, nominate (for OSD consideration) non-NATO countries for designation as authorized for a cross-servicing agreement.

(9) In coordination with the Joint Staff/J-5 and the Chairman's Legal Counsel, delegate to the combatant commands the authority to nominate (for OSD consideration), non-NATO countries for designation as authorized for a cross-servicing agreement.

(10) Forward to OSD combatant command nominations of non-NATO countries to be designated as authorized for a cross-servicing agreement.

(11) Review and forward to OSD written requests for retransfers of LSSS from the original foreign country or international organization recipient to another foreign country or international organization.

(12) Maintain and update, as required, a CJCS Instruction on ACSA and other written ACSA implementation guidance.

(13) In accordance with references b and c, provide two certified copies of each acquisition-only or cross-servicing agreement and all IAs negotiated by the Chairman (with language certification letter, if any, and the other information required by reference c) to the DOD General Counsel and one copy to the DOS Assistant Legal Advisor for Treaty Affairs not later than 20 days after such agreement has been signed by all parties.

(14) Maintain electronic copies of all signed acquisition-only or cross-servicing agreements and appropriate IAs.

(15) Organize and chair annual or more frequent meetings of OSD, Military department, combatant command and other ACSA POCs to discuss legal, policy, financial or other issues affecting the ACSA program.

f. Director, Joint Staff/J-5. The Director, J-5, shall:

(1) Provide a representative to the Joint Staff team negotiating and concluding cross-servicing agreements for which authority to negotiate and conclude has not been further delegated.

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(2) Coordinate on the review of proposed IAs or ACSA orders that involve the transfer or use of specific subcategories of military communications, equipment, systems, procedures and other support identified in references d and k.

(3) Coordinate on combatant command requests to negotiate and conclude cross-servicing agreements.

(4) Coordinate on Joint Staff determination of non-NATO countries from which the Department of Defense may acquire LSSS using acquisition-only authority.

(5) Coordinate on the nomination of non-NATO countries for designation as authorized for a cross-servicing agreement.

g. Director, Joint Staff/J-6. The Director, J-6, shall coordinate on the review of proposed IAs or ACSA orders that involve the transfer or use of specific subcategories of military communications, equipment, systems, procedures and other support identified in references d and k.

h. Chairman's Legal Counsel. CJCS Legal Counsel shall:

(1) Provide a representative to the Joint Staff team negotiating and concluding cross-servicing agreements for which authority to negotiate and conclude has not been further delegated.

(2) Provide legal review of proposed IAs or ACSA orders that involve the transfer or use of specific subcategories of military communications, equipment, systems, procedures and other support identified in references d and k.

(3) Provide legal review of combatant command requests to negotiate and conclude cross-servicing agreements.

(4) Provide legal review of Joint Staff determinations of non-NATO countries from which the Department of Defense may acquire LSSS using acquisition-only authority.

(5) Provide legal review of Joint Staff or combatant command nominations of non-NATO countries for designation as authorized for a cross-servicing agreement.

(6) On behalf of the Chairman, provide legal guidance as to the scope and type of allowable ACSA transactions.

i. Combatant Commanders. Combatant commanders shall:

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- (1) Acquire LSSS under acquisition-only authority in appropriate cases.
- (2) When authorized by the Chairman, negotiate and conclude cross-servicing agreements as a lead agent, or delegate this authority to a combatant command Service component or sub-unified command.
- (3) Coordinate with affected combatant commanders the negotiation, conclusion and execution of cross-servicing agreements and IAs that involve more than one combatant commander's geographic or functional area of responsibility.
- (4) Negotiate IAs on behalf of DOD components that are not subordinate to the combatant command in question, or delegate this authority to another DOD component or combatant command Service component or sub-unified command.
- (5) Forward for review and approval by the Joint Staff all IAs or ACSA orders that involve the transfer or use of specific subcategories of military communications, equipment, systems, procedures and other support identified in references d and k.
- (6) Determine the non-NATO countries from which the Department of Defense may acquire LSSS under acquisition-only authority. The names of such countries will be provided to the Joint Staff/J-4.
- (7) Nominate to the Joint Staff/J-4 non-NATO countries for designation as authorized for a cross-servicing agreement.
- (8) Provide guidance as to the permitted type and volume of ACSA transactions to combatant command Service component or sub-unified commands.
- (9) Forward to Joint Staff/J-4 written requests for retransfers of LSSS from the original foreign country or international organization recipient to another foreign country, international organization or foreign government entity (other than the original recipient).
- (10) In accordance with references b and c, provide two certified copies of each acquisition-only or cross-servicing agreement and all IAs negotiated by the combatant command (with language certification letter, if any, and the other information required by reference c) to the DOD General Counsel and one copy to the DOS Assistant Legal Advisor for Treaty Affairs not later than 20 days after such agreement has been signed by all parties. An electronically scanned copy (PDF format

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preferred) of the agreement and the language certification letter should also be submitted to the Joint Staff/J-4 at the same time.

(11) Develop and maintain training programs for all combatant command personnel involved in managing or executing cross-servicing agreements or using acquisition-only authority. In addition, combatant commands shall ensure training program uniformity among the Service component and sub-unified commands.

j. Commanders of the Combatant Command Service Component and Sub-Unified Commands. These commanders shall:

(1) Acquire and/or transfer LSSS under acquisition-only or cross-servicing authority, in accordance with the procedures contained in this Instruction and any additional program guidance provided by the responsible combatant command.

(2) When authorized by the responsible combatant command, negotiate and conclude acquisition-only agreements. Authority to conclude all acquisition-only agreements must be obtained from the responsible combatant command.

(3) When designated as a lead agent by the responsible combatant commander, negotiate and conclude IAs. Authority to conclude all IAs must be obtained from the responsible combatant command.

(4) In accordance with references b and c, provide two certified copies of each acquisition-only agreement or IA negotiated by the Service component command or sub-unified command (with language certification letter, if any, and the other information required by reference c) to the DOD General Counsel and one copy to the DOS Assistant Legal Advisor for Treaty Affairs not later than 20 days after such agreement has been signed by all parties. Copies shall also be provided to the responsible combatant command in accordance with combatant command guidance. An electronic scanned copy (PDF format preferred) of the agreement and the language certification letter should also be submitted to the Joint Staff/J-4 at the same time.

(5) Forward for review and approval to the combatant command all IAs or ACSA orders that involve the transfer or use of specific subcategories of military communications, equipment, systems, procedures and other support identified in references d and k.

(6) In coordination with the responsible combatant command, determine the source and value of reimbursement for LSSS that is acquired or transferred under a cross-servicing agreement and any IAs.

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(7) Develop, maintain, and provide reports from financial and program records of all ACSA transactions to support ACSA reporting requirements in accordance with references b, g, i, j and k and applicable Military department guidance.

(8) Develop and maintain component-specific training programs for all command personnel managing or executing cross-servicing agreements or using acquisition-only authority.

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ENCLOSURE C

PROCEDURES FOR DEVELOPING
ACQUISITION-ONLY AGREEMENTS, CROSS-SERVICING AGREEMENTS
AND IMPLEMENTING ARRANGEMENTS

1. Purpose. This Enclosure prescribes procedures for developing, negotiating and concluding acquisition-only agreements with eligible foreign countries or international organizations and cross-servicing agreements and IAs with authorized foreign countries and international organizations. It also includes procedures for nominating non-NATO countries for designation as authorized for a cross-servicing agreement. In developing and negotiating acquisition-only agreements, cross-servicing agreements and IAs, DOD components must comply with the provisions of references c and d and this Instruction.

2. Scope. The procedures contained in this Enclosure apply to acquisition-only agreements, cross-servicing agreements and IAs developed by the combatant commands or their Service component or sub-unified commands. They do not apply to the development of contracts using the authority outlined in reference a and Chapter 137 of 10 USC. IAs developed by the Military departments shall also follow these procedures but may be governed by additional Service-specific guidance.

3. Determination of Acquisition-Only Eligibility

a. Subparagraph 2i(6) of Enclosure B of this Instruction delegates to the combatant commands the authority to declare non-NATO countries as eligible for acquisitions by the Department of Defense under 10 USC 2341.

b. When an element of the Department of Defense desires to acquire LSSS from a non-NATO country or international organization with which there is no existing acquisition-only or cross-servicing agreement, the DOD element may request the responsible combatant commander to declare that country or international organization eligible for acquisitions under acquisition-only authority. The combatant commander may declare a non-NATO country eligible for such acquisitions only if the commander determines that the country meets at least one of the following criteria:

(1) Has a defense alliance with the United States.

(2) Permits the stationing of members of the US Armed Forces or the homeporting of US naval vessels in such country.

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(3) Has agreed to pre-position US materiel in such country.

(4) Serves as the host country for US Armed Forces during exercises or permits other US military operations in such country.

c. The names of such countries will be promptly provided to the Joint Staff/J-4.

4. Developing, Negotiating, and Concluding Acquisition-Only Agreements

a. As noted in Enclosure A, subparagraph 3d, acquisition-only authority may be executed via a contract using the authority of Chapter 137 of 10 USC), in conjunction with 10 USC 2341 and 2343 (i.e., a FAR contract), or via a separate international agreement (i.e., an acquisition-only agreement) developed, negotiated and concluded in accordance with reference c. The decision to use a contract or non-contract means is unique to the situation and depends on many factors, including the nature of the LSSS being acquired, the financial significance (amount) of the acquisition, whether the transaction is one-time or continuing and what other acquisitions are being made or contemplated with the country. If contracting is being considered, consultation with contracting authorities is essential before deciding on how to proceed.

b. If the decision is to proceed with an acquisition-only agreement, a draft proposed agreement should be prepared and staffed within the US-side for combatant command review and granting of authority to negotiate. Unlike cross-servicing agreements (see subparagraph 6a(1) of this Enclosure), acquisition-only agreements do not have a pre-approved template, because they are situation-specific. For instance, an agreement to acquire a pallet of bottled water via a one-time cash payment would likely be different from an agreement to acquire petroleum, oil, and lubricants support during an entire exercise on a replacement-in-kind basis. The draft should be developed in close coordination with legal support (see reference c), and staffed through interested offices within the requesting command. Provisions of the ACSA template (see subparagraph 6a(1) of this Enclosure) may be incorporated as appropriate.

c. Once a proposed draft has been developed by the requesting command, it must be submitted through command channels to the combatant command for authority to negotiate. Combatant commands will circulate regulations that specify the channel to be used and the documents to accompany such a request.

d. Combatant commands may negotiate acquisition-only agreements themselves, or may grant authority to negotiate the agreement to the requesting command. If the requesting command is granted authority to

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negotiate, that command will organize a negotiating team and conduct negotiations. The process set out in paragraph 6 of this Enclosure will generally be followed, except that the initial required staffing will be to the combatant command, which will determine whether staffing outside the combatant command is required.

e. Upon completion of negotiation, authorization to conclude the agreement will be sought from the combatant command, unless such authority (negotiate and conclude) has already been granted. Detailed procedures for obtaining authority to conclude will be set out in combatant command regulations.

f. The requesting command (or the command concluding the agreement, if different than the requesting command) will conclude the agreement as specified in subparagraphs 6h and 6i. Once the agreement is concluded, the requesting command (or the command concluding the agreement, if different from the requesting command) will provide two certified copies of the concluded agreement (with language certification letter if applicable and the other information required by reference c) to the DOD General Counsel and one copy (each) to the Chairman's Legal Counsel and the DOS Assistant Legal Advisor for Treaty Affairs not later than 20 days after such agreement is signed. Copies shall also be provided to the responsible combatant command in accordance with combatant command guidance. An electronically scanned copy (PDF format preferred) of the agreement and the language certification letter should also be submitted to the Joint Staff/J-4 at the same time.

5. Nominating Countries for Cross-Servicing Agreement Authorization

a. Subparagraph 2i(7) of Enclosure B to this Instruction delegates to the combatant commands the authority to nominate non-NATO countries and international organizations for designation as authorized for cross-servicing agreements.

b. Combatant commands nominating non-NATO countries or international organizations for designation as authorized for cross-servicing agreements shall forward such nominations in writing to the Joint Staff/J-4 for review and forwarding to OSD. Each nomination will be forwarded under separate memorandum and will contain the following information:

(1) The name of the nominated country or international organization.

(2) If applicable, the operation, exercise or other projected requirement supported by the proposed transfers of LSSS.

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(3) The strategic and/or operational benefits that will accrue to the United States as a result of the cross-servicing agreement.

(4) A statement that the designation of the nominated country or international organization is in the best interests of US national security.

c. The nomination will be accompanied by a letter of legal review from the nominating combatant command staff judge advocate.

d. Combatant commands should allow a minimum of 60 days for processing of cross-servicing agreement designation nominations.

e. The Joint Staff/J-4 will review and coordinate the combatant command nomination among other Joint Staff elements, including the J-5 and the Chairman's Legal Counsel. The nominating combatant command may be asked for clarification or additional information to strengthen the rationale for the nomination.

f. On completion of Joint Staff coordination, the Joint Staff/J-4 will forward the nomination to the OUSD(AT&L)/IC for further review and consultation with the Department of State. If OSD decides to support the nomination, OUSD(AT&L)/IC will provide 30 days advance notification to the Committees on Armed Services and Foreign Relations of the US Senate and the Committees on Armed Services and International Relations of the US House of Representatives.

g. Once the 30-day congressional notification period has expired without congressional objection, the OUSD(AT&L)/IC will notify the Joint Staff/J-4 that the nominated country or international organization is designated as authorized for a cross-servicing agreement. Joint Staff/J-4 will inform the nominating command via memorandum. Once informed, the nominating combatant command may initiate the negotiation of the cross-servicing agreement in accordance with procedures contained in paragraph 6.

6. Developing, Negotiating, and Concluding Cross-Servicing Agreements

a. Create the Proposed Draft Agreement

(1) The first step in the cross-servicing agreement process is the preparation and approval of the US draft. The baseline for all cross-servicing agreement negotiations is the current approved version of the ACSA negotiating text. This document is available in electronic format at the Joint Staff/J-4 classified website. That format should be adapted to the foreign country or international organization in question (filing in blanks as appropriate).

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(2) Because the “template” has been approved for negotiation, no additional approvals are necessary at this stage before presenting the draft to the foreign country or international organization. However if, in adapting the template to the foreign country or international organization, any substantive changes have been made to the template, the draft may require submission to Joint Staff for approval. Correction of typographical or grammatical errors does not normally constitute a “substantive” change; however, paraphrasing may well be substantive in nature. **Note:** Consult your legal advisor to determine whether additional approvals are required. In case of doubt, coordinate informally with Joint Staff/J-4 for a determination as to whether additional approvals are necessary.

b. Organize U.S. Negotiating Team

(1) The next step in the process is the organization of the US negotiating team. The responsible combatant command ACSA POC usually coordinates the organization of the team, which should include, at a minimum, the ACSA POC (as lead negotiator) and combatant command’s legal counsel. Representatives from the J-5 country desk team, Joint Staff and/or Service component or sub-unified commands may be included for complex or politically sensitive agreements. In addition, the combatant command ACSA POC should coordinate with the US country team, which may provide an observer to the negotiations.

(2) Before commencing negotiations, the lead negotiator should meet with the US negotiating team and the US country team to obtain information on anticipated foreign country or international organization positions, identify any potentially contentious issues and develop strategies for resolving them. **Note:** Country clearances and visas may be required if the negotiations are to take place in another country; sufficient lead-time should be allowed to obtain any required clearances or visas.

c. Conduct Negotiations and Prepare Revised Draft English Version of the Agreement

(1) The US lead negotiator will coordinate with the US country team to schedule the time and location for the negotiations. The draft text, along with a briefing, if desired, should be presented to the foreign country or international organization by the US country team sufficiently prior to the commencement of negotiations to allow the foreign country or international organization to study the draft, consider host country domestic law and regulations that may apply and be prepare for negotiations.

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(2) During negotiations, if the foreign country or international organization requests any major changes, the US negotiator may contact Joint Staff/J-4 informally (including by telephone or e-mail) for guidance and further instructions. Joint Staff/J-4 may consult informally within the inter-agency process and provide alternative wording or other instructions.

(3) As a result of the negotiations, the US negotiator may agree to proposed modifications to the DOD-authorized agreement text on the condition that the changes will not be binding until approved by the Joint Staff and OSD. The legal term for this "agreement to text subject to staffing and approval" is *ad referendum*.

(4) On completion of negotiations, both parties will staff the negotiated draft within their respective defense organizations as required. The US team will prepare a draft English version of the agreement, which will be used as the basis for staffing to ensure both sides are staffing the same text.

d. Coordinate With the Joint Staff/J-4 Regarding Need for Informal Review of Draft Agreement

(1) Once the proposed final draft of the agreement has been agreed to *ad referendum*, the combatant command ACSA POC may request an informal review of the draft agreement at the Joint Staff level. If such a review is desired by the combatant commander ACSA POC, the POC will forward the proposed final draft of the agreement and any supporting documentation via e-mail to the Joint Staff/J-4. Joint Staff/J-4 will coordinate an informal policy and legal review of the draft agreement within the Joint Staff.

(2) Upon completion of the review, the Joint Staff/J-4 will return the draft agreement to the responsible combatant command ACSA POC, if changes are necessary, with direction for further changes in the draft agreement. This step may be conducted by telephone or through e-mail.

e. Modify Draft (If Necessary) and Resubmit to Foreign Country or International Organization. The combatant command ACSA POC will revise the draft cross-servicing agreement in accordance with the guidance provided by the Joint Staff/J-4 (if changes are necessary) and resubmit the agreement through US country team channels to the foreign country or international organization. Additional coordination with the Joint Staff/J-4, US country team and foreign country or international organization may be required to develop a mutually acceptable version of the agreement.

f. Submit to Joint Staff/J-4 and OSD with Request to Conclude

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(1) Once both negotiating teams have approved the revised draft agreement ad referendum, the combatant command ACSA POC will submit the revised proposed draft agreement with a request for authority to conclude, via e-mail to the Joint Staff/J-4. This request will include the following documents:

(a) A memorandum in PDF format from the combatant command J-4, or other designated official, requesting authority to conclude.

(b) One clean copy and one "line-in, line-out" copy of the agreement indicating deviations from the authorized template, along with supporting rationale for each proposed deviation (which may be imbedded in the "line-in, line-out" version of the agreement), in .doc or .rtf format.

(c) A legal memorandum in PDF format stating the constitutional, statutory or other legal authority available to carry out each obligation proposed to be assumed by the United States in the agreement, and an explanation of other relevant legal considerations.

(2) The Joint Staff will forward the agreement package and request to conclude to the OUSD(AT&L)/IC ACSA focal point, which will coordinate a legal, policy and financial review of the package within OSD.

(3) Upon completion of OSD coordination, OUSD(AT&L)/IC will forward the proposed package to the Department of State.

(a) At the completion of this process, OUSD(AT&L)/IC will issue a memorandum granting authority to conclude the agreement to the Joint Staff or its designated agent. Any required changes to the text of the agreement will also be specified in the OUSD(AT&L)/IC delegation memorandum.

(b) If OUSD(AT&L)/IC declines to grant authority to conclude, it will issue a memorandum declining to grant the authority to conclude, with the rationale, to the Joint Staff.

(4) If changes to the ad referendum agreement text are required as a condition for approval to conclude, the combatant command ACSA POC will revise the draft text in accordance with the direction in the memorandum and resubmit the agreement through US country team channels to the foreign country or international organization. Additional coordination with the Joint Staff/J-4, US country team and foreign country or international organization may be required to develop a mutually acceptable version of the agreement.

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g. Redelegate Authority to Conclude. Upon receipt of the OUSD(AT&L)/IC delegation memorandum, the Joint Staff/J-4 will generally redelegate through e-mail the authority to conclude the agreement to the responsible combatant command J-4 ACSA POC. In exceptional situations, the Joint Staff/J-4 will retain the authority to conclude on behalf of the Chairman.

h. Obtain and Certify Foreign Translation of Agreement

(1) On receipt of authority to conclude, and agreement by the foreign country or international organization to any required text changes, the combatant command ACSA POC will prepare a final English version of the agreement and provide it to the foreign country or international organization through US country team channels. The foreign country or international organization is then responsible for preparing a version in its native language, if the agreement is to be signed in two different language versions.

(2) Once the translated version of the agreement has been received, the combatant command ACSA POC must arrange for an official certification that the foreign language text and the English language text are in conformity with each other, and that both texts have the same meaning in all substantive respects. The certifying official must be designated as qualified, consistent with local practice, as specified in paragraph 8.11 of reference c. The certifying official may need to discuss the translation with the foreign country or international organization and obtain mutually agreed upon adjustments to the translation in order to make this certification. The foreign language text must be certified before it is signed by the US signatory.

i. Conclude (Sign) Agreement. For purposes of military engagement, it is often preferable to have a contemporaneous mutual signing of the agreement—a “signing ceremony.” However, when a signing ceremony is either impracticable or undesirable, the following process will be used when possible.

(1) Once the foreign language certification has been completed, the combatant command ACSA POC will forward both English and foreign language versions of the agreement through US country team channels to the foreign nation or international organization signatory authority for signature. Upon return of both copies, signed by the foreign country or international organization, the ACSA POC will then forward both versions to the US signatory authority for signature. There is no required combatant command signature level, but it is customary that US and foreign nation or international organization signatories are of approximately equal rank or position. Upon signature by the US

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signatory, the combatant command ACSA POC will promptly forward through US country team channels one copy (each) of the English language and foreign language versions of the agreement, signed by both parties, to the foreign nation or international organization.

(2) The combatant command ACSA POC will also ensure certified copies of the agreement, signed by both parties and in both languages, are submitted in a timely manner to the offices and organizations specified in paragraph 7.2 of reference c and Enclosure C of reference d. The ACSA POC will also ensure compliance with all other post-signature processing requirements of these references. Local combatant command regulations may require additional copies be provided to other DOD elements, such as the designated combatant command international agreements repository (usually the judge advocate). The ACSA POC will also provide one electronically scanned copy (PDF format preferred) of the signed agreement and the language certification letter (if any) to the Joint Staff/J-4 at the same time.

7. Amending a Cross-Servicing Agreement

a. The process of amending a cross-servicing agreement is the same as for a new agreement. The combatant command ACSA POC must coordinate and request OSD and Joint Staff authority to conclude all amendments as described above.

b. There is no pre-approved "template" for amendments, because they are dependent on individual circumstances. The draft should be developed in close coordination with legal support. When the amendment is designed to implement changes in statute, provisions of the ACSA template (see subparagraph 6a(1) of this Enclosure) may be incorporated as appropriate.

c. Foreign language certification and distribution requirements for the concluded agreement (see subparagraph 6i(2)) also apply to cross-servicing agreement amendments.

8. Developing and Concluding Implementing Arrangements. IAs may be developed along with or separately from the parent cross-servicing agreement. The process is structurally similar to the cross-servicing agreement process, although the review and approval authorities differ because negotiation of IAs is usually delegated to combatant commands or their components.

a. Create the Proposed Draft IA

(1) Unlike cross-servicing agreements (see subparagraph 6a(1) of this Enclosure), IAs do not have a pre-approved template, because they

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are situation-specific. IAs may be lengthy, or only a page or two. They may be developed for a particular type of logistic support that requires lengthy specifications or statements of work (e.g., a menu of base operations support tasks, or specifications for a fuels replacement-in-kind agreement). IAs may also be used to support a particular operation or location (e.g., where authority to enter into ACSA orders is to be delegated to a joint task force logistics officer for support to the task force, or to an exercise officer for exercise support). Individual IAs may be concluded under the current combined ACSA/IA version of the ACSA "template," which includes a general IA embedded in it. Some older cross-servicing agreements (or mutual logistic support agreements) have no general IA and require individual IAs for most support.

(2) All IAs must include the following information:

(a) The name and alphanumeric identifier of the cross-servicing agreement that the IA implements.

(b) An alphanumeric identifier of the IA, for use on ACSA orders to identify which IA the order is placed against.

(c) The type(s) of LSSS covered by the IA (it could be all that are authorized under the ACSA, or any subset thereof).

(d) The geographic or operational limitation, if any, of the IA's applicability.

(e) US and foreign country or international organization POCs authorized to place and receive orders under the IA, and to collect and make payments.

(3) The draft should be developed in close coordination with legal support, and staffed through interested offices within the command. Once this has been completed, the draft must be staffed within the US side to the combatant command for authority to negotiate. Combatant commands will circulate regulations that specify the channel to be used and the documents to accompany such a request.

(4) Combatant commands may negotiate implementing arrangements themselves, or may grant authority to the requesting command to negotiate (or to negotiate and conclude) the implementing arrangement.

b. Organize US Negotiating Team

(1) The responsible combatant command ACSA POC or the ACSA POC of the command delegated authority to negotiate the implementing

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arrangement usually coordinates the organization of the team that should include, at a minimum, the ACSA POC (as lead negotiator) and command legal counsel. Representatives from other affected organizations may be included. For IAs that affect more than one combatant command's geographic or functional responsibility, representatives of these commands may also be included. In addition, the negotiating command's ACSA POC should coordinate with the US country team, which may provide an observer or advisor to the negotiations.

(2) Before commencing negotiations, the lead negotiator should meet with the US negotiating team and the US country team to obtain information on anticipated foreign country or international organization positions, identify any potentially contentious issues and develop strategies for resolving them. **Note:** Country clearances and visas may be required if the negotiations are to take place in another country; sufficient lead-time should be allowed to obtain any required clearances or visas.

c. Conduct Negotiations and Prepare Revised Draft English Version of the Agreement

(1) The US lead negotiator will coordinate with the US country team to schedule the time and location for the negotiations. The draft text, along with a briefing if desired, should be presented to the foreign country or international organization by the US country team sufficiently prior to the commencement of negotiations to allow the foreign country or international organization to study the draft, consider host country domestic law and regulations that may apply and prepare for negotiations.

(2) As a result of the negotiations, the US negotiator may agree to proposed modifications to the text approved for negotiations on the condition that the changes will not be binding until approved by appropriate authority. As noted above, the legal term for this "agreement to text subject to staffing and approval" is "*ad referendum*."

(3) On completion of negotiations, the US team will prepare an English version of the negotiated text. Any deviations from the text approved for negotiation should be clearly noted and rationale provided.

d. Coordinate Draft Within Combatant Command

(1) Once the negotiation has been completed, the combatant command ACSA POC will coordinate the document at the combatant command level in accordance with applicable command guidance. This step may include coordination with Service component or sub-unified command headquarters.

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(2) Draft IAs that affect other combatant commands' geographic or functional area of responsibility must be coordinated with the affected commands.

e. Forward Selected IAs to Joint Staff/J-4 for Review and Coordination

(1) Unless specifically advised otherwise by the Joint Staff/J-4, drafts of the following IAs will be submitted to that office for review and approval by the Joint Staff prior to being initially tendered to a foreign country or international organization and, once conditionally agreed to by the foreign country or international organization, before the IA can be concluded:

(a) IAs having policy significance, as defined in references c and d.

(b) IAs that envision the transfer or use of specific subcategories of military communications assets and related services. A list of such assets and services is contained in reference d.

(c) Any other IA for which the authority to negotiate or conclude has been withheld by, or specifically reserved to, the Chairman or OSD.

(2) If there is any question concerning the appropriate level at which a proposed IA should be reviewed and/or approved, the combatant command ACSA POC should consult the Joint Staff/J-4.

(3) The Joint Staff/J-4 shall coordinate the proposed IA with the Chairman's Legal Counsel, the Joint Staff/J-5 and the Joint Staff J-section with staff responsibility for the LSSS in question.

(4) Upon completion of Joint Staff coordination, the Joint Staff/J-4 will return the proposed IA to the responsible combatant command ACSA POC with direction for further changes (if any) in the draft agreement.

f. Modify Draft and Resubmit to Foreign Country or International Organization. Upon completion of combatant command and, if necessary, Joint Staff coordination, the responsible combatant command ACSA POC (or the negotiating command's ACS POC) will incorporate changes made to the IA and resubmit the IA through US country team channels to the foreign country or international organization.

g. Obtain and Certify Foreign Translation of IA

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(1) Upon receipt of authority to conclude, and agreement by the foreign country or international organization to any required changes in text, the combatant command (or negotiating command) ACSA POC will prepare a final English version of the agreement, and provide it to the foreign country or international organization through US country team channels. The foreign country or international organization is then responsible for preparing a version in its language if the agreement is to be signed in two language versions.

(2) Once the translated version of the agreement has been received, the combatant command ACSA POC must arrange for an official certification that the foreign language text and the English language text are in conformity with each other, and that both texts have the same meaning in all substantive respects. The certifying official must be designated as qualified, consistent with local practice, as specified in paragraph 8.11 of reference c. The certifying official may need to discuss the translation with the foreign country or international organization, and obtain mutually agreed upon adjustments to the translation in order to make this certification. The foreign language text **must** be certified before it is signed by the US signatory.

h. Conclude (Sign) IA. For purposes of military engagement, it is often preferable to have a contemporaneous mutual signing of the agreement—a “signing ceremony.” However, when a signing ceremony is either impracticable or undesirable, the following process will be used when possible.

(1) Once the foreign language certification has been completed (and authority to conclude has been granted, if applicable), the combatant command (or concluding command) ACSA POC will forward both English and foreign language versions of the arrangement, through US country team channels, to the foreign country or international organization signatory authority for signature. Upon return of the copies, signed by the foreign country or international organization, the ACSA POC will then forward both versions to the US signatory authority for signature. There is no required US signature level, but it is customary that the US and foreign nation or international organization signatories be of approximately equal rank or position. Upon signature by the US signatory, the combatant command (or concluding command) ACSA POC will promptly forward through country team channels one copy of both the English and foreign language versions of the agreement, signed by both parties, to the foreign nation or international organization.

(2) The combatant command ACSA POC will also ensure certified copies of the IA, signed by both parties and in both languages, are

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submitted in a timely manner to the offices and organizations specified in paragraph 7.2 of reference c and Enclosure C of reference d. The ACSA POC will also ensure compliance with all post-signature processing guidelines detailed in those references. Local combatant command regulations may require additional copies be provided to others, such as the designated combatant command international agreements repository (usually the judge advocate). The ACSA POC will also provide one electronically scanned copy (PDF format preferred) of the signed agreement and the language certification letter to the Joint Staff/J-4 at the same time.

9. Amending an IA

a. The process of amending an existing IA is the same as for a new arrangement. Depending on the extent of the desired changes, it may be possible to agree on amendments through e-mail or by telephone, in lieu of direct face-to-face negotiations. However, the combatant command ACSA POC must coordinate the proposed IA as described above. Any IA amendments that affect other combatant commands must be coordinated with those commands and the Joint Staff prior to conclusion. Foreign language certification and distribution requirements for the concluded agreement (see subparagraph 8h(2) above) also apply to IA amendments.

b. Combatant commands should review all POC annexes to existing IAs at least annually and submit any changes, as needed, to the Joint Staff/J-4 in electronic PDF format. Copies of the changed POC annexes will also be provided to the other party, through US country team channels. Amendments to IA POC annexes do not require coordination at the Joint Staff level.

ENCLOSURE D

EXECUTION PROCEDURES

1. Purpose. This Enclosure prescribes procedures for executing ACSA transactions under acquisition-only authority or cross-servicing agreement authority. Reference b requires Secretaries of the Military departments, or their designees, to be responsible for establishing appropriate oversight procedures, as well as keeping and maintaining financial and program records of all ACSA transactions. These procedures may be supplemented or adjusted to reflect conditions or requirements unique to a geographical or functional combatant command, its Service component or sub-unified commands, or a specific operation.

2. Scope. The ACSA program is intended to be executed at the lowest organizational level and primarily by the combatant command Service component or sub-unified commands. This Enclosure prescribes procedures for acquiring LSSS under acquisition-only authority and for three forms of LSSS transfer under cross-servicing agreement authority: transfer for cash reimbursement; transfer for replacement-in-kind (RIK) or equal value exchange (EVE) reimbursement; and loan/lease for cash, RIK, or EVE reimbursement. This Enclosure also addresses open-ended ACSA orders and prescribes procedures for requesting approval of third-party transfers under ACSA.

3. Acquisition of LSSS Under Acquisition-Only Authority

a. Identify Logistics Requirement and Appropriate Procurement Mechanism

(1) The first step in the acquisition process is to identify the type, quantity and timing of the US Armed Forces' logistics requirements. These requirements are normally identified and refined at the combatant command Service component or sub-unified command level by the responsible command or unit logistics elements, in coordination with the official designated as the ACSA ordering authority in the acquisition-only agreement, if one exists, or a warranted contracting officer.

(2) Once the US logistics requirement is defined, the responsible ACSA ordering authority, in coordination with command legal counsel and contracting officials if necessary, confirms that the required support falls within the scope of LSSS permitted under the ACSA authorities and that the required goods or services are not reasonably available from US commercial sources under the current circumstances.

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(3) If the conditions specified in subparagraph 3a(2) can be met, the designated ACSA ordering authority proceeds to the next step in the transaction.

b. Negotiate the Terms and Conditions of the ACSA Order

(1) Acquisitions of LSSS under acquisition-only authority may be executed through contracts negotiated by warranted contracting officers using the general procurement authority of Chapter 137 of 10 USC, in conjunction with 10 USC 2341 and 2343. In accordance with reference b, all contracts that use Chapter 137 authority must be executed by warranted contracting officers in accordance with the applicable DOD and Military department procurement regulations.

(2) Acquisitions of LSSS using acquisition-only authority may also be executed through an acquisition-only agreement, which constitutes an international agreement under reference c. Such agreements may be executed through a standard ACSA order form (a sample form is provided as an appendix to this Enclosure). ACSA ordering authorities are encouraged to consult with a warranted contracting officer for complex or high-value transactions.

(3) Before execution of the contract or other acquisition order, the responsible contracting officer or ordering authority will ensure the availability of reimbursement means (appropriated funds or exchange of LSSS) for the LSSS to be acquired. The ACSA order form or other agreement will specify the form of reimbursement.

c. Receive LSSS

(1) As the requested LSSS is delivered to US Armed Forces, the responsible ordering authority or contracting officer or designee verifies partial or complete delivery of the LSSS in accordance with the provisions of the contract or acquisition-only agreement.

(2) Once delivery of LSSS is verified, the responsible ordering authority or contracting officer or designee informs the responsible Service component or sub-unified command resource management element. This office may then initiate payment processing via the appropriate service or agency financial management system.

d. Reimburse Foreign Country or International Organization

(1) Reimbursement for LSSS acquired under acquisition-only authority is processed in accordance with the terms of the relevant contract or acquisition agreement. DFAS, in coordination with the Service component or sub-unified command resource management

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element, is usually responsible for the receipt, validation and payment of foreign invoices for LSSS acquired under acquisition-only authority or a cross-servicing agreement.

(2) For acquisitions to be reimbursed through RIK or EVE, once the receipt of LSSS is verified, the US ACSA POC will initiate the order of LSSS to be used as reimbursement through the supply system of the providing Service component or sub-unified command. This step may involve coordination with one or more logistics or contracting POCs of the responsible Service component or sub-unified command. To the maximum extent possible, Service component or sub-unified command personnel should use existing standard supply and contracting systems and processes for obtaining LSSS used as reimbursement in acquisition-only transactions. This also applies to LSSS to be provided by private vendors under contract to DOD components for ongoing logistics support to US Armed Forces.

(3) Military airlift, sealift and other forms of transportation services provided or funded by USTRANSCOM as reimbursement under an ACSA order or contract will be requested in accordance with the procedures described in reference m. The DOD official ordering from, or contracting with, a foreign country or international organization to provide LSSS that will be reimbursed by services provided or funded by USTRANSCOM will provide USTRANSCOM with the funding information necessary to ensure reimbursement of the Transportation Working Capital Fund (TWCF).

(4) Acquisition-only transactions in which the United States reimburses a providing foreign country or international organization through RIK or EVE will be documented in a standard ACSA order form (see the appendix to this Enclosure) or similar document to ensure proper reporting of the transaction.

4. Transfer of LSSS Under Cross-Servicing Agreement Authority

a. Transfer of LSSS for Cash Reimbursement. The following procedures apply to the transfer of LSSS from US Armed Forces to foreign countries or international organizations or vice versa under a cross-servicing agreement for cash reimbursement.

(1) Identify Logistics Requirement and Appropriate Transfer Mechanism

(a) The first step in the ACSA transfer process is to identify the type, quantity and timing of the US, foreign country or international organization logistics requirement. For the United States, these requirements are normally identified and refined at the combatant

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command Service component or sub-unified command level by the responsible command logistics elements, in coordination with the ACSA POC designated in the relevant cross-servicing agreement or IA.

(b) Once the logistics requirement is defined, the responsible US ACSA POC, in coordination with command legal counsel and contracting officials (if necessary), confirms the required support falls within the scope of LSSS permitted under the ACSA authorities and is not otherwise inappropriate under ACSA (e.g., foreign disclosure and unusual liability). If the United States is acquiring LSSS, the US ACSA POC must determine if the required goods or services are not reasonably available from US commercial sources, taking into consideration all relevant circumstances (e.g., timeliness, costs, purpose of exercise or operation and location). Transactions must also be consistent with US national interests and the US commander's requirements.

(2) Negotiate the Terms and Conditions of the ACSA Order

(a) Once the transfer is deemed to be an appropriate ACSA transaction, the US ASCA POC and foreign country or international organization counterpart will negotiate the terms and conditions of the ACSA order. These will address, at a minimum, the type, quantity, delivery location and schedule, billing information and price of the LSSS to be transferred. Due to the binding nature of the ACSA order, both parties should make every effort to agree on a firm fixed price for the requested support. Failing that, a "not to exceed" amount must be specified in the order. Additional DOD guidance on pricing LSSS under ACSA is provided in references g and h.

(b) ACSA orders requesting military airlift, sealift and other forms of transportation services provided or funded by USTRANSCOM shall be forwarded to USTRANSCOM for review and approval. In such cases, the ACSA transaction will be negotiated and concluded between USTRANSCOM and the requesting foreign country or international organization.

(3) Initiate ACSA Transaction

(a) Once both parties have agreed on the terms and conditions of the ACSA order, they initiate the transaction by completing all required parts of the ACSA order form specified in the relevant cross-servicing agreement or IA. A sample of the form used for ACSA transactions with NATO countries and organizations is provided as an appendix to this Enclosure. If this form is deemed inadequate, it can be replaced by a substitute form or supplemented with additional documents (specifications, statement of work, etc.), so long as the

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minimum essential data elements specified in the underlying cross-servicing agreement or IA are provided. A replacement form or supplemental documents may be in any form or media (written or electronic) permitted by the underlying cross-servicing agreement or IA. Once the form is completed and signed by both parties, it constitutes a binding international commitment.

(b) If the United States is acquiring LSSS for payment in cash, before signing the ACSA order form the US ACSA POC will coordinate with the responsible Service component or sub-unified command resource management element to obtain fund certification for the dollar value of the order. The fund cite with the required certification will be noted on the ACSA order form. At the same time, the responsible component resource management element will enter the ACSA order as a commitment and obligation into the relevant financial management system. If the United States is transferring the LSSS for payment in cash, the ACSA order form should reflect the fund cite of the burdened account to which the reimbursement should be credited.

(c) In the event that incorrect pricing information is noted on the ACSA order form, US ACSA POCs should resolve the situation informally with recipient foreign country or international organization ACSA POCs as soon as possible—ideally before any or all of the requested LSSS is delivered and accepted. This may require amending the order, or canceling it and executing a new order with the correct pricing data. Once the LSSS has been delivered and accepted per the standard ACSA process, it may be difficult to correct the discrepancy.

(4) Initiate Order of LSSS

(a) Once the order is signed by both parties, the US ACSA POC will initiate the order of LSSS (for US-provided support) through the supply system and process of the providing organization. This step may involve coordination with one or more logistics or contracting POCs of the responsible Service component or sub-unified command. To the maximum extent possible, Service component or sub-unified command personnel should use existing standard logistic and/or contracting systems and processes for providing support under cross-servicing agreements. This applies also to ACSA orders for LSSS to be provided by private vendors contracted by DOD components to provide ongoing logistics support to US Armed Forces.

(b) Military airlift, sealift and other forms of transportation services provided or funded by USTRANSCOM under an ACSA order will be requested in accordance with the procedures described in reference m.

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(5) Deliver LSSS and Verify Delivery and Receipt

(a) For support provided by the United States, LSSS specified in an ASCA order is delivered from current DOD inventory through the Service component or sub-unified command supply system, directly from US logistics elements, or from contracted vendors according to the schedule defined in the order. At the time of complete or partial delivery of LSSS, the ACSA POC or other designated official obtains verification from the requesting foreign country or international organization ACSA POC that the LSSS has been delivered and accepted. This step is documented on Part B of the sample ACSA order form included as an appendix to this Enclosure.

(b) Once the receiving party has verified delivery and acceptance of LSSS, the ACSA POC will provide a copy of the completed ACSA order form to (in the case of the United States) the responsible Service component or sub-unified command resource management element, which updates the Service financial management system to initiate billing and collection.

(c) In the case of partial deliveries, steps (5)(a) and (5)(b) will be repeated for each partial delivery until the entire order has been completed.

(6) Bill and Collect Reimbursement for LSSS Provided by the United States

(a) Upon receipt of the completed ACSA order form, the Service component or sub-unified command resource management element will update the appropriate financial management systems and forward the ACSA order form to the DOD organization identified in the cross-servicing agreement or IA for billing and collection.

(b) Upon receipt of the ACSA order form, the DOD billing element (e.g., DFAS) generates the necessary bills (generally a DOD Form 1080) and transmits them to the payment office specified in the cross-servicing agreement, IA or ACSA order. Once reimbursement is received, the DOD billing element (e.g., DFAS) will update its internal accounting and financial management systems and credit the DOD appropriation cited in the respective bill.

b. Transfer of LSSS for RIK or EVE. The procedures described below apply to the transfer of LSSS from US Armed Forces to a foreign country or international organizations for RIK or EVE reimbursement under a cross-servicing agreement.

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(1) Identify Logistics Requirement and Appropriate Transfer Mechanism. The process of identifying the logistics requirement and the appropriate transfer mechanism for a transfer of LSSS for RIK or EVE is the same as in transfer of LSSS for cash. This is described in subparagraphs 4a(1)(a)–4a(1)(c) above.

(2) Negotiate the Terms and Conditions of the ACSA Order

(a) Once the transfer is deemed to be an appropriate ACSA transaction, the US ASCA POC and the foreign country or international organization counterpart will negotiate the terms and conditions of the ACSA order. These will address all information required to complete the transaction, including the type, quantity, delivery location, delivery schedule, billing information, value of the LSSS to be transferred and the form of reimbursement (RIK or EVE). Additional DOD guidance on pricing LSSS under ACSA is provided in references g and h.

(b) ACSA orders for services provided or funded by USTRANSCOM in which the foreign country or international organization requests to provide RIK or EVE reimbursement will be forwarded to USTRANSCOM for review and approval. Generally, transactions involving RIK or EVE reimbursement for services provided by USTRANSCOM using TWCF funds will not be approved unless the DOD organization receiving the RIK or EVE, or another DOD organization, provides a fund cite to USTRANSCOM to ensure the TWCF is properly reimbursed.

(3) Initiate ACSA Transaction

(a) Once both parties have agreed to the terms and conditions of the ACSA order, they initiate the transaction by completing all required parts of the ACSA order form specified in the relevant cross-servicing agreement or IA. A sample form, based on what is used for ACSA transactions with NATO countries and organizations, is provided as an appendix to this Enclosure. In the event this sample form is deemed inadequate, it can be replaced by a substitute form or supplemented with additional documents (specifications, statement of work, etc.), so long as the minimum essential data elements specified in the underlying cross-servicing agreement or IA are provided. A replacement form or supplemental documents can be in any format or media (written or electronic) permitted by the underlying cross-servicing agreement or implementing arrangement. Once the form is completed and signed by both parties, it constitutes a binding international commitment.

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(b) Before signing the order, the US ACSA POC should ensure the ACSA order for RIK or EVE reimbursement contains a validated estimate of the value of the LSSS to be transferred. Unlike an ACSA transfer for cash reimbursement, there is no requirement to obtain a fund cite certification prior to signing the order; however, if the RIK or EVE transaction is not completed, it can become a cash transaction which would require a fund cite, in some cases a year later. This possibility should be considered at the time of the initial transaction.

(4) Initiate Order of LSSS

(a) Once the order is signed by both parties, the ACSA POC will initiate the order of LSSS (for US-provided support) through the supply system or process of the providing organization. This step may involve coordination with one or more logistics or contracting POCs of the responsible Service component or sub-unified command. To the maximum extent possible, Service component or sub-unified command personnel should use existing standard logistic and/or contracting systems and processes for providing support under a cross-servicing agreement. This applies also to ACSA orders for LSSS to be provided by private vendors contracted by DOD components to provide ongoing logistics support to US Armed Forces.

(b) Military airlift, sealift and other forms of transportation services provided or funded by USTRANSCOM as reimbursement under an ACSA order will be requested in accordance with the procedures described in reference m.

(5) Deliver LSSS and Verify Delivery and Receipt

(a) The process of delivering LSSS in a RIK/EVE transaction is the same as in transfer of LSSS for cash. This is described in subparagraph 4a(5)(a).

(b) When providing support, once the recipient party has verified delivery and acceptance of LSSS, the US ACSA POC will provide a copy of the completed ACSA order to the responsible Service component or sub-unified command resource management element. The latter holds this documentation pending foreign reimbursement via RIK or EVE.

(6) Receive RIK or EVE Reimbursement and Reconcile ACSA Order. Once the foreign country or international organization has reimbursed the responsible Service component or sub-unified command via RIK or EVE within the required timeframe (generally 1 year from delivery of the LSSS), the responsible Service component or sub-unified command ACSA POC will note that fact either on the original ACSA order

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form or via separate documentation. The responsible Service component or sub-unified command ACSA POC will also inform the Service component or sub-unified command resource management element of the completion of the transaction.

(7) Process Order as Reimbursable Transaction in Case of Default. If the foreign country or international organization fails to reimburse US Armed Forces via RIK or EVE within the required timeframe (usually a maximum of 1 year), the transaction is converted into a cash transaction, as required under references a and g. The responsible Service component or sub-unified command resource management element will inform the Service component or sub-unified command ACSA POC of the failure to reimburse. The resource management element will then process the order as a reimbursable transaction as described in paragraphs 4a(6)(a) and (b) above.

c. Loan of LSSS for Cash, RIK or EVE. The procedures described below apply to the transfer of LSSS by temporary loan or lease by US Armed Forces to foreign countries or international organizations for cash, RIK or EVE reimbursement under a cross-servicing agreement.

(1) Identify Logistics Requirement and Appropriate Transfer Mechanism. The process of identifying the logistics requirement and the appropriate transfer mechanism for the loan or lease of LSSS items for cash, RIK or EVE is the same as in transfer of LSSS for cash. This is described in subparagraphs 4a(1).

(2) Negotiate the Terms and Conditions of the ACSA Order. Once the transfer is deemed to be an appropriate ACSA transaction, the US ASCA POC and the foreign country or international organization counterpart will negotiate the terms and conditions of the ACSA order. These will address all information required to complete the transaction, including the type, quantity, delivery location, delivery schedule, billing information, value of the LSSS to be loaned or leased and the costs and term of the loan or lease. Specific DOD guidance on pricing loans or leases of US military equipment is provided at reference h.

(3) Initiate ACSA Transaction; Initiate Order of LSSS; Deliver LSSS and Verify Delivery and Receipt; and Bill and Collect Reimbursement for LSSS. The processes of initiating the ACSA transaction, initiating the order of LSSS, delivering LSSS and verifying delivery and receipt and billing for and collecting reimbursement for LSSS are the same for the loan or lease of LSSS items as they are in transfer of LSSS. For the loan of LSSS items for cash, these procedures are described in 4a(3), (4), (5) and (6) above. For the loan of LSSS items

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for RIK or EVE, the procedures are described in paragraphs 4b(3), (4), (5) and (6) above.

(4) Verify Return of Loan in Serviceable Condition

(a) Upon the expiration of the loan, the foreign country or international organization returns the loaned items as specified in the ACSA order. The US ACSA POC will verify that the returned items are serviceable as defined in the original order. This step may involve an extensive inspection and/or testing of the returned items and require the support of logistics specialists. If the items are determined to be serviceable, the responsible ACSA POC will inform the Service component or sub-unified command resource management element and note that fact either on the original ACSA order form or via separate documentation.

(b) If the returned items are determined not to be serviceable, either through damage or loss, the US ACSA POC, with the assistance of logistics specialists if necessary, will develop an estimate of the cost to repair the damage or replace lost items and forward this information to the responsible Service component or sub-unified command resource management element. The resource management element then develops a bill and collects reimbursement as described in subparagraphs 4a(6)(a) and (b) above. **Note:** Other international agreements may affect the ability of the United States to collect reimbursement for damages caused to US equipment while in the possession of foreign military forces or international organizations. Consequently, prior to loaning high-value, delicate or hard-to-replace equipment, the US ACSA POC should consult the staff judge advocate if there is any question regarding the ability to collect for possible damages to that equipment.

5. Open-Ended or Continuing ACSA Orders

a. Operational necessity or the nature of the LSSS provided may result in the need to enter into an “open-ended” or “continuing” ACSA order in which one or more of the critical data elements, such as quantity of LSSS or the period of time over which the LSSS is to be provided, cannot be defined in advance. For example, a request by a foreign country or international organization that the United States transport 2–4 pallets of sustainment cargo per week over an established route for the duration of an operation lacks a definite quantity (number of pallets to be moved) or a definite time frame. However, the cost of moving a pallet over the specified route is known. In such cases, a separate ACSA order is not necessary for each shipment.

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b. Open-ended or continuing ACSA transactions may be concluded as long as there is sufficient information to enable the parties to understand and accept their respective responsibilities and liabilities, as well as a clear understanding of how orders will be placed, executed and billed. In the example in subparagraph 5a, once the transportation of the foreign country or international organization cargo has been completed, the ACSA transaction may then be completed and a bill generated. In the interim, the parties may agree that billing will occur monthly or quarterly for the number of pallets moved in the preceding month or quarter, until the operation ends. This approach will avoid the accumulation of a large outstanding unliquidated balance between the parties.

c. Caution must be taken not to obligate beyond (or before) the period of availability of the funding. For example, for severable services, the service normally must be paid for with funds available for the fiscal year in which the service is performed. Accordingly, an ACSA order cannot be placed in one fiscal year for services performed or paid for in another fiscal year unless the order contained a "subject to availability of funds" clause. Consult your legal advisor before placing any order that may continue across fiscal years.

d. For all ACSA orders in which the final amount cannot be determined at the time the order is signed, a "not-to-exceed" amount will be agreed to and noted on the order. LSSS valued in excess of that amount may not be transferred under that order. If the not-to-exceed amount is found to be insufficient, a new ACSA order must be placed for any additional amount.

6. Third-Party Retransfers

a. Policy

(1) Reference b requires prior written approval from the US Government for the retransfer of LSSS from the original foreign country or international organization recipient to another foreign government, international organization or to any entity other than the officers, employees or agents of the foreign country or international organization whose military originally received the LSSS.

(2) If the US Government approves the retransfer of LSSS to another entity, the original recipient of the LSSS remains obligated for reimbursement to the United States for the full value of the entire quantity of LSSS originally provided by the United States in accordance with the terms of the ACSA order. Further, the third-party recipient

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must also agree not to further retransfer the LSSS without the prior written approval of the United States.

(3) The Service component or sub-unified command executing the retransfer will ensure all approved retransfers are properly and fully documented, and include the information elements listed in subparagraph 6b(1) and all information in required ACSA reports.

b. Requesting Approval for Retransfers

(1) Requests for approval of third party retransfer will be prepared in writing by the responsible combatant command headquarters in coordination with the Service component or sub-unified command that originally provided the LSSS in question. The request should be based on a formal request from the foreign country or international organization seeking to retransfer LSSS. The combatant command retransfer request will provide, at a minimum, the following information:

(a) The name of the foreign country or international organization seeking to retransfer LSSS.

(b) The name of the foreign country, international organization or other government department or organization receiving the LSSS.

(c) The type, quantity and value of LSSS to be retransferred.

(d) The length of time of the retransfer (for loans and leases).

(e) The relevant contingency operation or exercise.

(f) The physical location of the retransfer.

(2) Retransfer requests shall be forwarded to the Joint Staff or OSD as soon as the requirement for retransfer is developed.

(3) Retransfer requests seeking one or more form of blanket retransfer authority (by operation, type of LSSS, foreign country or international organization or periods of time) must provide compelling rationale for such requests.

(4) Retransfer requests will be transmitted via e-mail or in writing through the combatant command to the Joint Staff/J-4 for review and forwarding to OUSD(AT&L)/IC for coordination and final disposition.

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(5) OSD will respond (approved, denied or approved with conditions or restrictions) to the retransfer request to the affected combatant command through the Joint Staff/J-4. If the request is approved, the US ACSA POC that managed the original transaction shall communicate the US response to the affected foreign country or international organization.

(6) The third-party recipient of the retransfer shall provide to the United States a written undertaking not to further transfer the LSSS without the prior written approval of the United States. Such approval would be requested and processed in the same manner as the original retransfer approval (see paragraph 6 of this Enclosure).

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APPENDIX A TO ENCLOSURE D
SAMPLE ACSA ORDER FORM

STANDARDIZATION AGREEMENT 3381, ANNEX B, NATO STANDARD FORM FOR REQUEST, RECEIPT AND RETURN OR INVOICE FORMULAIRE STANDARD OTAN DE DEMANDE, DE RESTITUTION OU DE FACTURATION								
A. <input type="checkbox"/> REQUEST/DEMANDE <input type="checkbox"/> RETURN/RESTITUTION					C. INVOICE/FACTURE			
1. REQUISITION NO./No de la demande		4. FROM/De (Requesting Party/demandeur)		5. NATION	22. INVOICING AUTHORITY/Service de facturation			
		6. TO/A (Supporting party/furnisseur)		7. NATION				
2. SUPPORT AGREEMENT/Accord de reolement		8. TIME AND PLACE OF DELIVERY REQUESTED/Lieu et date de livraison demande			23. INVOICE NO./No de la facture		DATE	24. TRANSACTION CODE (US USE ONLY)
		9. RECEIVING PARTY/Destinataire						
3. MEANS OF TRANSPORT: AIRCRAFT/VEHICLE/SHIP/ Moyen de transport: Aeronet/ vehicule/navire		10. NAME/Nom, RANK/Grade, SIGNATURE			25. TRANSPORTATION DOCUMENT NO./No de bordereau		26. ACCOUNT NO. (US USE ONLY)	
		DATE						
NO.	NATO STOCK NO./ No de nomenclature	DESCRIPTION	MEASURE UNIT/ Unites de mesure	QUANTITY REQUESTED Quantite demande	QUANTITY DELIVERED/ Quantite fournis	UNIT PRICE/ Prix Unitaire	TOTAL	ATTACHMENTS AND VOUCHERS/ Pieces justificatives
11	12	13	14	15	27	28	29	30
16. OTHER COSTS/Autres frais								
17. METHOD OF COMPENSATION/Mode de compensation <input type="checkbox"/> CASH/Paiement comptant <input type="checkbox"/> DEFERRED REIMBURSEMENT/Paiement differe <input type="checkbox"/> REPLACEMENT IN KIND/Remboursement en nature					31. TOTAL AMOUNT CLAIMED/Total de la facture		32. CURRENCY/Monnaie	
18. AUTHORIZATION BY OFFICIAL OF SUPPORTING PARTY/Autorisation du responsable official NAME/Nom, RANK/Grade, SIGNATURE			19. AGREED DATE OF RETURN/ Date de restitution		33. PAYABLE TO/ACCOUNT NO./FOR/Payable a/No de compte/En reglement de			
B. ACKNOWLEDGEMENT OF RECEIPT/ACCUSE DE RECEPTION					34. I CERTIFY THAT THE AMOUNT INVOICED IS EXCLUSIVE OF ALL TAXES FOR WHICH EXEMPTION HAS BEEN GRANTED UNDER PROVISION OF EXISTING AGREEMENTS AND THAT THE INVOICE IS CORRECT/Je certifie l'exactitude de la presente facture, son montant n'iclut aucune des taxes dont l'exemption est accordee en vertu d'accords en vigueur.			
20. RECEIPT, ACCEPTED/Recu un bonnet et duo ferse PLACE AND DATE/Lieu et date		NAME/Nom, RANK/Grade, SIGNATURE		21. TRANSPORTATION/Transport <input type="checkbox"/> FREE <input type="checkbox"/> WITH OF CHARGE / CHARGE/ Gratuit A titre onereux		35. NAME/Nom, RANK/Gade, SIGNATURE		

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ENCLOSURE E

REFERENCES

- a. Title 10, United States Code, sections 2341-2350, Subchapter I, Chapter 138.
- b. DOD Directive 2010.9, 28 April 2003, "Acquisition and Cross-Servicing Agreements"
- c. DOD Directive 5530.3, 11 June 1987, "International Agreements"
- d. CJCSI 2300.01B, 1 November 2003, "International Agreements"
- e. Section 506(a), Foreign Assistance Act (22 USC 2318)
- f. Arms Export Control Act (AECA), Public Law 90-629 (22 USC 2751 *et seq.*)
- g. DOD 7000.14-R, "International Acquisition and Cross-Servicing Agreements," Volume 11A, Chapter 8
- h. United States Munitions List (Part 121 of Title 22, Code of Federal Regulations)
- i. DOD 7000.14-R, Volume 11A, "User Charges," Chapter 4
- j. DOD 7000.14-R, Volume 3, "Receipt and Distribution of Budgetary Resources," Chapters 13–15
- k. DOD 7000.14-R, Volume 6, "Collecting and Reporting of Foreign Indebtedness Within the DoD" Chapter 12
- l. CJCSI 6110.01A, 1 July 2002, "CJCS Controlled Communication Assets"
- m. DOD 4500.9-R, "Defense Transportation Regulation"

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GLOSSARY
PART I – ABBREVIATIONS AND ACRONYMS

ACSA	acquisition and cross-servicing agreement
CJCS	Chairman of the Joint Chiefs of Staff
DFAS	Defense Finance and Accounting Service
DOD	Department of Defense
DODD	Department of Defense directive
DOS	Department of State
EVE	equal value exchange
FAR	Federal Acquisition Regulation
LSSS	logistic support, supplies and services
NATO	North Atlantic Treaty Organization
OSD	Office of the Secretary of Defense
OUSD(AT&L)/IC	Office of the Director, International Cooperation, Office of the Under Secretary of Defense for Acquisition, Technology and Logistics
PDF	portable document format (Adobe Acrobat)
POC	point of contact
RIK	replacement-in-kind
TWCF	Transportation Working Capital Fund
UN	United Nations
USC	United States Code
USTRANSCOM	United States Transportation Command

PART II – TERMS AND DEFINITIONS

acquisition-only agreement. A legal instrument (other than a contract) entered into under the authority of 10 USC 2341 to acquire logistic support, supplies and services from eligible foreign countries and international organizations. An acquisition-only agreement is an international agreement under reference c. (DODD 2010.9)

acquisition and cross-servicing agreement. See definition for cross-servicing agreement. An acquisition and cross-servicing agreement is an international agreement under reference c.

acquisition and cross-servicing agreement authorities. For the purposes of this Instruction, the legal authorities conferred under reference a.

combatant command. A unified or specified command with a broad continuing mission under a single commander established and so designated by the President, through the Secretary of Defense and with the advice and assistance of the Chairman of the Joint Chiefs of Staff. Combatant commands typically have geographic or functional responsibilities. (Joint Pub 1-02)

cross-servicing agreement. A legal instrument entered into under the authority of 10 USC 2342 that authorizes the reciprocal provision of logistic support, supplies and services. A cross-servicing agreement may also be referred to as a mutual logistics support agreement or an acquisition and cross-servicing agreement. A cross-servicing agreement is an international agreement under reference c. (DODD 2010.9)

DOD components. The Office of the Secretary of Defense (OSD), the Military Departments, the organization of the Joint Chiefs of Staff, the combatant commands, the Inspector General, Department of Defense (IG, DOD), the DOD field activities and the Defense agencies. (DODD 2010.9)

implementing arrangement. A supplementary arrangement that prescribes details, terms and conditions to implement cross-servicing agreements effectively. While implementing arrangements may normally be more detailed in terms of defined levels of activity than cross-servicing agreements themselves, they must be completely consistent with associated cross-servicing agreements and DODD 2010.9 (reference c). Implementing arrangements that do not involve the obligation of funds may extend for an indefinite period of time. An implementing arrangement is an international agreement under reference c. (DODD 2010.9)

logistic support, supplies, and services. Food, water, billeting, transportation (including airlift), petroleum, oils, lubricants, clothing, communications services, medical services, ammunition, base operations support (and construction incident to base operations support), storage services, use of facilities, training services, spare parts and components, repair and maintenance services, calibration services and air and seaport services. The term also includes temporary use (lease or loan) of general purpose vehicles and other non-lethal items of military equipment that are not designated as significant military equipment on the US Munitions List promulgated pursuant to 22 USC 2778(a)(1). [10 USC 2350(1)]

major end-item. Final combinations of items that are ready (assembled) for intended use; e.g., vehicles, self-propelled artillery pieces, missile launchers and major weapons systems. Major end items are further divided into subclasses of air, ground, support material, administrative vehicles, electronics, tactical vehicles, missiles, weapons, special weapons, industrial material and aircraft engines. (DODD 2010.9)

military forces. Agencies or organizations of a government providing armed forces that operate according to the methods, laws and customs of war, established by an act of the government, in which persons are appointed, enlisted or inducted for military service, and that operate and are administered within a military or executive department. (DODD 2010.9)

mutual logistics support agreement. See definition for cross-servicing agreement. A mutual logistic support agreement is an international agreement under reference c.

order. A written request, in an agreed-upon format and signed by an authorized individual, for the provision of specific logistic support, supplies and services pursuant to an acquisition and cross-servicing agreement and any applicable implementing arrangement. When accepted (signed), an order constitutes a legally binding obligation.

Service component command. A command consisting of the Service component commander and all those Service forces, such as individuals, units, detachments, organizations and installations under that command, including the support forces that have been assigned to a combatant command or further assigned to a subordinate unified command or joint task force. (Joint Pub 1-02)

subordinate unified or sub-unified command. A command established by commanders of unified commands, when so authorized through the Chairman of the Joint Chiefs of Staff, to conduct operations on a continuing basis in accordance with the criteria set forth for unified

commands. A subordinate unified command may be established on an area or functional basis. Commanders of subordinate unified commands have functions and responsibilities similar to those of the commanders of unified commands and exercise operational control of assigned commands and forces within the assigned operational area. (Joint Pub 1-02)

transfer. Selling (whether for payment in currency, replacement-in-kind or exchange of supplies or services of equal value), leasing, loaning or otherwise temporarily providing logistic support, supplies and services.